

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|-------------------------------------|---|------------------------------------|---------------------------------|
| Investigator: Erin Sweeney | Team: Squad #8 | CCRB Case #: 201501004 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 06/18/2014 4:45 AM | Location of Incident: Martense Street and Flatbush Avenue | Precinct: 70 | 18 Mo. SOL 12/18/2015 | EO SOL 12/18/2015 | |
| Date/Time CV Reported Thu, 02/12/2015 9:30 AM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Thu, 02/12/2015 9:30 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. SGT Jose Baez | 02864 | 924914 | 070 PCT |
| 2. POM Max Rolffot | 01669 | 949566 | 070 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Elvis Alcivar | 29226 | 937956 | 070 PCT |
| 2. SGT Andre Blain | 1118 | 926579 | PBBS |
| 3. POF Carvel Alexander | 11516 | 939773 | TB H/O |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.POM Max Rolffot | Abuse: PO Max Rolffot searched the car in which § 87(2)(b) was an occupant. | |
| B.POM Max Rolffot | Abuse: PO Max Rolffot refused to provide his name to § 87(2)(b) | |
| C.SGT Jose Baez | Abuse: Sgt. Jose Baez detained § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On June 18, 2014, at approximately 4:45 a.m., at Martense Street and Flatbush Avenue in Brooklyn, § 87(2)(b)'s vehicle was stopped by Sgt. Jose Baez and PO Max Rolffot of the 70th Precinct. § 87(2)(b) was driving to his job as a construction worker on the Second Avenue Subway line. His friend, § 87(2)(b) was sitting in the front passenger seat. During the stop, § 87(2)(b) called his wife, § 87(2)(b), and she spoke to Sgt. Baez on the phone before it was handed back to § 87(2)(b) § 87(2)(b) alleged the following: PO Rolffot opened his door and reached inside the side compartment on the door to retrieve a box cutter that § 87(2)(b) uses for work (**Allegation A**). PO Rolffot showed the box cutter to Sgt. Baez, and then returned his license, registration, PBA card, and cell phone and told § 87(2)(b) that he was free to go. PO § 87(2)(b) who was still on the phone, told § 87(2)(b) to ask PO Rolffot for his name. § 87(2)(b) asked, and PO Rolffot did not provide it (**Allegation B**). Furthermore, § 87(2)(b)'s asking for PO Rolffot's name prompted Sgt. Baez to place § 87(2)(b) in handcuffs and take him to the stationhouse (**Allegation C**). PO Rolffot leaned inside the vehicle and looked in the back seat (subsumed in **Allegation A**). § 87(2)(b) was taken to the 70th Precinct stationhouse. § 87(2)(b) Sergeant Blain used his discretion to determine that § 87(2)(b) should be released. PO Alcivar issued § 87(2)(b) a summons for tinted windows. § 87(4-b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- On February 17, 2015, § 87(2)(b) was presented with mediation. § 87(2)(b)
- On May 20, 2015, The Office of the Comptroller revealed that no Notice of Claim had been filed in regard to this incident (enc. 15A).
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- PO Rolffot has been a Member of Service for four years and has seventeen total allegations. None of the previous allegations are substantiated. § 87(4-b) § 87(2)(g)
- Sgt. Baez has been a Member of Service for fifteen years and has seven total allegations. § 87(4-b) § 87(2)(g)
- This is § 87(2)(b)'s first CCRB complaint (enc. 2D).

Potential Issues

- § 87(2)(g)

Findings and Recommendations

Allegations not Pleaded

- Stop and Summons:** Although § 87(2)(b) and PO § 87(2)(b) said that Sgt. Baez told them that § 87(2)(b) was stopped for reckless driving, Sgt. Baez and PO

Alcivar stated that § 87(2)(b) was stopped only for tinted windows. § 87(2)(b) acknowledged that his rear windows and back windshield are tinted, that he added the tints himself, and that he estimated that the tints prevent about 20 percent of light from entering. There are no tints on the front of the vehicle. PO Alcivar released § 87(2)(b) with a summons that stated: “Window tint—light transmittance under 70 percent” (enc. 4H).

Explanation of Subject Officer Identification:

- **Allegations A and B** are pled against PO Rolffot because § 87(2)(b) described the officer who searched his car and refused to provide his name as a 35 year-old light-skinned white or Hispanic officer between 5’10” and 6’0” tall with brown hair (enc. 4D). This description matches PO Rolffot, who is a § 87(2)(b)-old light-skinned Hispanic male who stands 6’2” tall, weighs 198 pounds, with brown hair (enc. 5J). § 87(2)(b) also said that this officer was Sgt. Baez’s partner, which Sgt. Baez and PO Rolffot corroborated (enc. 7H-7K and 5H-5I). Sgt. Baez and PO Alcivar stated that PO Rolffot was present during the stop, but PO Rolffot had no memory of the stop, and thought his first and only interaction with this incident was seeing § 87(2)(b) at the stationhouse (enc. 5H-5I).

Allegation A—PO Max Rolffot searched the car in which § 87(2)(b) was an occupant.

Allegation C—Sgt. Jose Baez authorized the detainment of § 87(2)(b)

§ 87(2)(b) stated that while Sgt. Baez was on the phone with PO § 87(2)(b) PO Rolffot opened § 87(2)(b)’s door, looked inside the door, and found the box cutter that § 87(2)(b) uses for work. § 87(2)(b) described the box cutter as blue with seven blades that can be used interchangeably; at the time he was stopped, there was no blade in the knife. If there is a blade in the knife, one has to pull the blade out of the knife to expose it. One has to use both hands to open the knife, but it could be possible to open it with one hand; one would have to use a substantial amount of force to open it with one hand. PO Rolffot, after conferring with Sgt. Baez about the box cutter, told § 87(2)(b) he was free to go. Only after § 87(2)(b) asked PO Rolffot for his name, and after PO Rolffot spoke to Sgt. Baez, did Sgt. Baez say, “Get out of the car. You’re under arrest.” When § 87(2)(b) asked why, Sgt. Baez said, “I was just trying to be nice.” PO Alcivar handcuffed § 87(2)(b) PO Rolffot leaned his entire upper body into the vehicle and looked at the items in the back seat for a few seconds. § 87(2)(b) did not see him touch any items inside of the vehicle. No officer asked § 87(2)(b) for his consent to search the vehicle, and § 87(2)(b) did not give his consent in any way (enc. 4B-4D). He was taken to the stationhouse where he was released approximately one hour after he arrived with a summons for tinted windows (enc. 3C; 4B-4D; 13B).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) Sgt. Baez asked her, “If I searched his car, would I find anything?” § 87(2)(b) told Sgt. Baez that her husband does not drink, smoke, or do drugs. § 87(2)(b) corroborated § 87(2)(b)’s statement that he was arrested upon asking for PO Rolffot’s name. She could not recall if at the stationhouse, PO Alcivar said anything to her about the knife or if any knives were ever given to her. She could not recall what the knife looked like, and she could not recall if she ever saw it. She could not recall if the knife was returned to § 87(2)(b) She did not know if her husband owned a gravity knife (enc. 8B-8C).

PO Rolffot stated and that he had no recollection of the stop, § 87(2)(b) or any of the details surrounding the stop. His memo book states that at 4:30 a.m., he was on patrol at East 21st Street between Avenue I and Avenue P in Brooklyn, and at 4:45 a.m., he had the code for “non-crime—corrected.” He was on patrol until 6:00 a.m., when he went back to the stationhouse to complete paperwork from an unrelated arrest that occurred the previous night. However,

testimony from Sgt. Baez and PO Alcivar confirms that PO Rolffot was present during the stop (enc. 5H-5I).

Sgt. Baez stated that he went to the front passenger window, which was lowered, and saw a gravity knife sitting next to the gearstick. Sgt. Baez was able to determine it was a gravity knife simply by looking at it because he had come across that knife in the past and recognized the style of the knife. He could not articulate any further how he knew it was a gravity knife, and could not recall the color of the knife or the length of the blade. When he saw this knife, he stood up and gestured to PO Rolffot and PO Alcivar, who were on § 87(2)(b)'s side of the vehicle, and pointed to the car and mouthed "knife" to them. Sgt. Baez stated that he told § 87(2)(b) over the phone that he was going to arrest § 87(2)(b) for this knife. § 87(2)(b)

§ 87(2)(b) PO Alcivar asked § 87(2)(b) to step out of the vehicle so that he could place him under arrest, and as he was closing the door, he saw the second knife in the door. PO Alcivar entered the vehicle to retrieve the knives. No further search of the vehicle was conducted. Sgt. Baez never saw PO Alcivar look in any other part of the vehicle, and PO Rolffot never leaned inside or entered the vehicle. Sgt. Baez never leaned inside or entered the vehicle (enc. 7H-7K).

Sgt. Baez did not see the knife in the door, and he only took a quick glance at the knife once it had been retrieved from the vehicle. He believed it was a gravity knife, but he was not certain, because he had never seen a knife like that before. Sgt. Baez first said that the knife was "a regular black-handled knife," but later said he could not recall the color. PO Alcivar told him that the knife opened when pressure is applied, which further convinced Sgt. Baez that the knife was a gravity knife. At the stationhouse, Sgt. Baez told Sgt. Blain, the desk sergeant, that during a stop for a traffic infraction, it was revealed that § 87(2)(b) was in possession of one knife. As § 87(2)(b) was being placed under arrest, another knife was found. Sgt. Baez went downstairs to process paperwork and PO Alcivar continued processing the arrest. § 87(2)(b) came to the stationhouse, and Sgt. Blain called Sgt. Baez asked if there was any way they could release him with a summons. Sgt. Baez said, "Listen, you're the desk officer; you're allowed to use discretion. The knives were found in the car, but I don't know his background. If you feel that he should be released with a summons, go ahead." Sgt. Baez first said he was uncertain if the knives were given back to § 87(2)(b) or PO § 87(2)(b) but later said they were given to § 87(2)(b) because § 87(2)(b) should not have the knives, even if he uses them for work (enc. 7H-7K). Additionally, in the copy of his memo book entry that arrived at the CCRB on March 6, 2015, Sgt. Baez had only "0600: 84 at SH regarding arrest" written (enc. 7C). There were no other entries about the stop; at 0445, all he had was "91." The copy that he provided to the investigator on the date of his interview, March 19, 2015, read: "0600: 84 at stationhouse regarding arrest at Flatbush/Martense (§ 87(2)(b) PO Alcivar" (enc. 7F). He did not edit any of his earlier entries for that day, or add anything else about the stop.

PO Alcivar stated that § 87(2)(b) was already standing outside of the vehicle when he arrived. Only the driver's side window was down. Sgt. Baez told PO Alcivar, "He was stopped for the tints. Look in the console." Sgt. Baez did not say anything about a possible weapon or tell him why he should look in the console. When PO Alcivar looked, he saw a gravity knife in plain view in front of the gearshift. PO Alcivar could tell it was a gravity knife because his training and ten years of experience taught him this. He had never seen this particular knife before, but he could tell it was a gravity knife because of the handle, which was dark brown, and the blade, which was folded inside of the handle. He could not provide any other details about the knife. PO Alcivar placed § 87(2)(b) in handcuffs for possession of a gravity knife, and then opened the driver's door and retrieved the knife in the center console. When he went to shut the door, he saw a second knife in the compartment of the door. The second knife was much smaller, but he was certain it was another gravity knife just by looking at it. He could only see about half of the knife

§ 87(2)(g)

[REDACTED]

Allegation B—PO Max Rolffot refused to provide his name to § 87(2)(b)

§ 87(2)(b) stated that PO § 87(2)(b) told him to ask PO Rolffot for his name. § 87(2)(b) asked for his name, and PO Rolffot said, “One minute; let me ask my sergeant.” Immediately after PO Rolffot spoke to Sgt. Baez, Sgt. Baez said, “Get out of the car; you’re under arrest” to § 87(2)(b). When he filed the complaint, he provided Sgt. Baez’s name and PO Alcivar’s tax number, which he retrieved from the summons, but he did not provide PO Rolffot’s name (enc. 3C). § 87(2)(b) stated that his wife told him that she had spoken to Sgt. Baez and that he never learned PO Rolffot’s name. (enc. 4B-4D).

§ 87(2)(b) heard § 87(2)(b) ask an officer his name and the officer respond with, “Hold on.” Immediately after this, § 87(2)(b) told § 87(2)(b) that he was going to be arrested. She never heard the officer provide his name (enc. 8B-8C).

PO Rolffot stated that he was not present at the scene and that he had no recollection of § 87(2)(b) or the circumstances surrounding the stop. (enc. 5H-5I).

Sgt. Baez and PO Alcivar stated that they never heard § 87(2)(b) ask any officers their names during the incident. Sgt. Baez stated that PO Rolffot interacted with § 87(2)(b) while PO Alcivar said he never saw the two interact (enc. 7H-7K and 6E-6G).

An officer must clearly state his or her name to anyone who requests them, according to Patrol Guide procedure 203-09 (enc. 1A).

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

Pod: 8

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date